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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/078,394

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Tatsuo Akiyama

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08/24/2006

C. IRVIN MCCLELLAND  
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

KRISCIUNAS, LINDA MARY

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/078,394	<b>Applicant(s)</b> AKIYAMA ET AL.	
	<b>Examiner</b> Linda Krisciunas	<b>Art Unit</b> 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,4,7,8,10,11,14,17,18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,7,8,10,11,14,17,18 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>July 28, 2006</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The following is a Final office action in response to the amendments filed July 28, 2006. Claims 1, 4, 7-8, 10-11, 14, 17-18 and 20 are pending. Claims 2-3, 5-6, 9, 12-13, 15-16 and 19 were canceled.

#### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on July 28, 2006 does not contain an English abstract as indicated in the Remarks filed July 28, 2006 and therefore is not in compliance with the provisions of 37 CFR 1.97. Despite this, the examiner has initialed the form to acknowledge that the foreign references were cited by the applicant.

#### ***Response to Amendment***

3. The Examiner has fully considered the amendments to the claims and has addressed them within the art rejection below.

#### ***Response to Arguments***

4. All statements of Official Notice made in the art rejection have been on record since issuance of the Non-Final office action rejection mailed on April 28, 2006, and in the subsequent response filed on July 28, 2006 the Applicant was silent on the matter of Official Notice. Consequently, the statements of Official Notice made in the art rejection have been established as admitted prior art due to Applicant's failure to adequately traverse the Examiner's assertions of Official Notice.

With respect to the applicant's arguments that De La Motte teaches a third person determining the price of the products, the Examiner disagrees. De La Motte

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teaches that an independent quality-control measurement organization applies ratings to the products in accordance with a standardized rating system so that when the buyer and seller are negotiating price they can both use a mutually understood product quality rating to rationally value and compare products. Therefore it is not the third party that is providing a value for the product, but the buyer.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1, 4, 7, 11, 14 and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The term "judgment data" is not enabled by the specification and is considered new matter.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 4, 7-8, 10-11, 14, 17-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wojcik et al (US 5,666,493) in view of De La Motte (US 2005/0108140).

As per claims 1 and 11, Wojcik teaches a purchase mediating section configured to exchange information with a buyer through a network (See Figure 1a, purchasing interface and column 7, lines 18-21, where the systems are networked and Figure 24: "purchasing" (440)); a factory mediating section configured to exchange information with a factory (column 1, lines 51-55: "The present invention has the ability to efficiently receive customer orders, process them, create appropriate financial records and coordinate this information with the inventory and manufacturing functions to prepare and load consolidated shipments for transportation to a customer."); a manufacture order storing section configured to store an order, which is inputted through the purchase mediating section and includes at least one design specifications, a quantity, a desired delivery date and examination specification (column 1, lines 51-67, where the object of the invention is to receive and fill customer orders. The information is contained in databases as noted in claim 1.); a line information storing section configured to store line information which is inputted through the factory mediating section and includes a processing ability state of a manufacturing line in the factory (column 1, lines 61-63, where the ability to meet the order is verified which is equivalent to the processing ability state of a manufacturing line as it performs an identical function in substantially the same manner with substantially the same results); a price information storing section configured to store price information, which includes

relationships between contents of manufacture orders and trading prices (column 1, line 64, where the system prices the order); a calculating section configured to calculate an estimated price and an estimated delivery date of a product with reference to the price information and the line information, in response to the manufacture order (column 4, lines 12-13, where there are pricing and profitability software modules and column 6, lines 7-10, where delivery lead time and delivery schedules are determined); a progress selecting section configured to transmit the estimated price and the estimated delivery date to the buyer through the purchase mediating section, and allow the buyer to select whether to proceed with manufacture of the product or not; and proceed with manufacture of the product or not (column 7, lines 1-2, where once the order is accepted then the order fulfillment step takes place); and a manufacture instructing section configured to transmit the order to the factory through the factory mediating section, when proceeding with manufacture of the product is selected (column 7, lines 1-3, where the ordered is picked and packed by the warehouse which inherently means that the order was sent to the manufacturer or warehouse for order fulfillment).

Wojcik teaches a buyer as part of a system for managing customer orders, but does not expressly teach the specific data recited in claims 1 and 11 with respect to a "mask buyer"; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same

regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *MPEP* § 2106. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize a buyer as taught by Wojcik for a mask product as well since the mask is also a product being ordered and Wojcik would provide a means, regardless of industry or product, to facilitate the procurement of the product.

Wojcik teaches an examination data storing section configured to store examination data of the product manufactured in the factory, the examination data being inputted through the factory mediating section (See Figure 24, quality assurance (438), where documentation is generated with respect to the quality of the product.). Wojcik does not explicitly teach an examination data transmitting section configured to transmit the examination data to the buyer through the purchase mediating section. Official notice is taken that it is old and well known in the arts to include a certificate of analysis or other quality document with orders to provide a means for substantiating the quality of the product being shipped. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the procurement system of Wojcik with a quality document feature to provide a means for ensuring the quality of the product and maintaining customer service.

Wojcik does not explicitly teach examination data includes a coordinate position and a dimension of a defect generated in the product. Official notice is taken that it is

old and well known that quality data contains various defect indicators as mentioned by Wojcik in column 18, line 32 (quality certificates). In various industries, specifically the diamond industry, there are reports and pictorial representations of flaws or defects in the diamonds and where they are located as well as their size. The quality certificate guarantees a certain agreed-to level of quality which would include number of defects and defect size and location. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to include a list and location of defects in the product to inform the customer as to any potential issues with the product.

Wojcik does not explicitly teach purchase determination based upon review of judgment data. De La Motte teaches that it is known for a purchase selecting section configured to allow the buyer, through the purchase mediating section, to select, on the basis of the judgment data, whether to buy the product or not (See examination data in Figures 3 and 4 and see paragraph 46, where the buyer may reject the bid and paragraph 132, where the buyers are allowed to weight various quality components and make independent determinations as to which are acceptable.). De La Motte is an analogous art as it also teaches about managing customer orders. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the order system of Wojcik with the buyer reject feature of De La Motte to provide a means for allowing the buyer to avoid being stuck with product that does not meet expectations. This would also improve customer service since no customer would be happy having to pay for product that did not meet their expectations.



Wojcik does not explicitly teach the buyer submitting a price. De La Motte teaches that it is known the purchase selecting section further comprises a portion configured to allow the buyer, through the purchase mediating section, to input a desired purchase price of the product on the basis of the judgment data (see paragraph 12 where the system is geared toward buyers and suppliers negotiating the price of the items. Therefore it would imply that both sides are submitting pricing information.). De La Motte is an analogous art as it also teaches about managing customer orders. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the order system of Wojcik with the buyer bidding feature of De La Motte to provide a means for negotiation between the buyers and sellers which will more quickly facilitate the selling process as both sides have input.

With regard to "judgment data", Wojcik teaches quality assurance (438) documentation which constitutes data. Wojcik does not expressly teach the specific data recited in claims 1, 4, 7, 11, 14, and 17; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

As per claim 4 and 14, Wojcik does not explicitly teach judgment data further includes an optical simulation image obtained by the mask product. Official notice is taken that it is old and well known that quality data contains various defect indicators as mentioned by Wojcik in column 18, line 32 (quality certificates). In various industries, specifically the diamond industry, there are reports and pictorial representations of flaws or defects in the diamonds and where they are located as well as their size. The quality certificate guarantees a certain agreed-to level of quality which would include number of defects and defect size and location. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to include a list and location of defects in the product to inform the customer as to any potential issues with the product.

As per claims 7 and 17, Wojcik teaches a re-manufacture instructing section configured to instruct re-manufacture of the product to the factory through the factory mediating section, when re-manufacture of the product is selected (See Figure 25 and 35 and column 19, lines 4-13, where the rejected material is sent back to manufacturing and dispositioned to either inventory or quarantine). Wojcik does not explicitly teach the buyer indicating re-manufacture of the product. De La Motte teaches that it is known to have a re-manufacture selecting section configured to allow the buyer, through the purchase mediating section, to select, on the basis of the judgment data, whether to re-manufacture the mask (product) or not (see paragraph 124 where if defects are present, the lot is rejected based independently upon each buyer's criteria which is equivalent to the buyer indicating re-manufacture as it performs an identical function in substantially the same manner with substantially the same results.). De La Motte is an analogous art

as it also teaches about managing customer orders. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the order system of Wojcik with the re-manufacture feature of De La Motte to provide a means for allowing the buyer to reject product that does not meet the specifications and indicate to the manufacturing facility why the rejection is being made. This allows for closed-loop feedback from customers to manufacturing which should help to reduce rejects.

As per claims 8 and 18, Wojcik the buyer is allowed to select purchase of the product and re-manufacture of the product at the same time (see Figure 16 and column 13, lines 18-41, where the customer or buyer contacts the manufacturer about a shortage or damaged product and even though they indicate to buy the product they are still asking for 're-manufacture" so that they can get their shortage or damaged products replaced or credited. This is equivalent to buying the product and indicating re-manufacture as it performs an identical function in substantially the same manner with substantially the same results.).

As per claims 10 and 20, Wojcik teaches the line information stored in the line information storing section is renewed with the latest line information inputted through the factory mediating section every time a product order is inputted (See Inventory Management section, column 16, lines 1-38, where inventory is scanned and updated in the database.).

Wojcik teaches an order as part of a system for customer orders, but does not expressly teach the specific data recited in claims 10 and 20 with respect to a "mask manufacture order"; however, these differences are only found in the non-functional

descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize an order as taught by Wojcik for a mask manufacture order as well since the mask manufacture order is also a customer order and Wojcik would provide a means, regardless of industry or product types, to facilitate procurement of the product.

### **Conclusion**

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linda Krisciunas whose telephone number is 571-272-6931. The examiner can normally be reached on Monday through Friday, 6:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LMK

*LMK*  
*August 15, 2006*

*Romain Janty*  
*Primary Examiner*  
*Art Unit 3623*